IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22.8.2007

CORAM:

THE HONOURABLE MR.JUSTICE P.D.DINAKARAN
AND
THE HONOURABLE MR.JUSTICE R.REGUPATHI

H.C.P.No.573 of 2007

Arunachalam .. Petitioner

Vs

1. The State of Tamil Nadu,
   rep. by its Secretary to Government,
   Department of Prohibition & Excise,
   Fort St. George,
   Chennai 600009.

2. The District Magistrate and
   the District Collector,
   Cuddalore District, Cuddalore. .. Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India for issue of Writ of Habeas Corpus as stated therein.

For Petitioner : Mr.R.Sankarasubbu
For Respondents: Mr.N.R.Elango
Additional Public Prosecutor

ORDER

(Order of this Court was made by P.D.DINAKARAN,J.)

The petitioner, who is friend of the detenu, Mahesh, son of Balaraman, who was incarcerated by order dated 13.3.2007 of the second respondent under Section 3(1) of the Tamil Nadu Prevention of Dangerous Activities of Bootleggers, Drug Offenders, Forest Offenders, Goondas, Immoral Traffic Offenders, Sand Offenders, Slum Grabbers and Video Pirates Act, 1982 (Tamil Nadu Act 14 of 1982) branding him as a Goonda, has preferred this writ petition for issue of a Writ of Habeas Corpus to

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call for the records in connection with the order of detention passed by the second respondent dated 13.3.2007 in C3/do/12/2007 against the petitioner's friend Mahesh, son of Balaraman, who confined at Central Prison, Cuddalore and set aside the same and to direct the respondents to produce the above said detenu before this Court and set him at liberty.

2. The order of detention dated 13.3.2007 came to be passed based on the ground case said to have taken place on 31.8.2006, on the basis of the complaint lodged by one Velu before the Inspector of Police, Parangipettai Police Station. According to the the said Complainant, his brother was having friendship with one Tamilzharasan and Thirugnanam and all of them were missing from 24.8.2006 and the said Tamilzharasan took others in his Yamaha motor cycle bearing Registration No.TN-01-9486. Hence a case was registered in Crime No.188/2006 under Section 363 I.P.C. Again on 6.1.2007, on the basis of the complaint lodged by one Ramamurthy before the Inspector of Police, Parangipettai Police Station. According to the said complainant, one Vimalraj and Manikandan waylaid him and robbed his wrist watch and a cash of Rs.250/- by showing knife. Hence another case was registered in Crime No.4/07 under Sections 394 and 397 I.P.C. During the course of investigation, both the accused have given a separate confession statement stating that they along with the detenu and other persons murdered the said Thirugnanam, Anandan and Thamizharasan and a case was registered in Crime No.3/2007 under Sections 302, 301 I.P.C. on the file of Kullanchavadi Police Station. The second respondent, taking note of this case as a ground case and finding that there is one adverse case pending against the detenu for the offence punishable under Section 379 I.P.C., having satisfied that there is a compelling necessity to detain him in order to prevent him from indulging in the activities which are prejudicial to the maintenance of public order, ordered his detention dubbing him as a Goonda.

3. Since Mr.R.Sankarasubbu, learned counsel for the petitioner challenges the impugned order of detention dated 13.3.2007 mainly on the ground of delay in considering the representation dated 24.3.2007 made on behalf of the detenu, we do not propose to go into the other aspects of the case.

4.1. Before delving into the issue relating to the delay as contended above, it would be apt to refer the law on the point.

4.2. Article 22(5) of the Constitution of India suggests that the obligation of the Government is to offer the detenu an opportunity of making a representation against the order, before it is confirmed according to the procedure laid down under the relevant provisions of law, vide K.M. Abdulla Kunhi v. Union of India, (1991) 1 SCC 476 .

4.3. The right to representation under Article 22(5) of the Constitution of India includes right to expeditious disposal by the State Government. Expedition is the rule and delay defeats mandate of Article 22

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(5) of the Constitution of India, vide Ram Sukrya Mhatre v. R.D. Tyagi, 1992 Supp (3) SCC 65.

4.4. Any inordinate and unexplained delay on the part of the Government in considering the representation renders the detention illegal, vide Tara Chand v. State of Rajasthan, (1980) 2 SCC 321 and Raghavendra Singh v. Supdt., Distt. Jail, (1986) 1 SCC 650.

4.5. It is a constitutional obligation of the Government to consider the representation forwarded by the detenu without any delay. Though no period is prescribed by Article 22 of the Constitution for the decision to be taken on the representation, the words "as soon as may be" in clause (5) of Article 22 convey the message that the representation should be considered and disposed of at the earliest. But that does not mean that the authority is pre-empted from explaining any delay which would have occasioned in the disposal of the representation. The court can certainly consider whether the delay was occasioned due to permissible reasons or unavoidable causes. If delay was caused on account of any indifference or lapse in considering the representation, such delay will adversely affect further detention of the prisoner. In other words, it is for the authority concerned to explain the delay, if any, in disposing of the representation. It is not enough to say that the delay was very short. Even longer delay can as well be explained. So the test is not the duration or range of delay, but how it is explained by the authority concerned. Even the reason that the Minister was on tour and hence there was a delay of five days in disposing of the representation was rejected by the Apex Court holding that when the liberty of a citizen guaranteed under Article 21 of the Constitution of India is involved, the absence of the Minister at head quarters is not sufficient to justify the delay, since the file could be reached the Minister with utmost promptitude in cases involving the vitally important fundamental right of a citizen, vide Rajammal v. State of T.N., (1999) 1 SCC 417.

5. Coming to the case on hand, admittedly, on receipt of the order of detention dated 13.3.2007, a representation was sent to the detaining authority on 24.3.2007, which was received by them on 26.03.2007. Parawar remarks were called for from the Sponsoring Authority on 29.3.2007 and remarks were received from the sponsoring authority only on 17.4.2007. It is surprising to notice from the records that the sponsoring authority took time from 29.3.2007 to 17.4.2007 (18 days) for sending the remarks, which is also not properly explained. Even taking note of the intervening public holidays, viz., 31.3.2007, 1.4.2007, 6.4.2007, 7.4.2007, 8.4.2007, 14.4.2007 and 15.4.2007 (7 days), the delay of eleven days in sending the remarks by the sponsoring authority to the Government is admittedly unexplained and inexcusable.

6. At this juncture, a reference to the decision of the Apex Court in Kundanbhai Dulabhai Sheikh v District Magistrate, Ahmedabad, (1996) 3 SCC 194 is apposite:

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"In spite of law laid down above by this Court repeatedly over the past three decades, the Executive, namely, the State Government and its officers continue to behave in their old, lethargic fashion and like all other files rusting in the Secretariat for various reasons including red-tapism, the representation made by a person deprived of his liberty, continue to be dealt with in the same fashion. The Government and its officers will not give up their habit of maintaining a consistent attitude of lethargy. So also, this Court will not hesitate in quashing the order of detention to restore the 'liberty and freedom' to the person whose detention is allowed to become bad by the Government itself on account of his representation not being disposed of at the earliest."

7. That apart, it is a settled law that there should not be supine indifference, slackness or callous attitude in considering the representation. Any unexplained delay in the disposal of representation would be a breach of the constitutional imperative and it would render the continued detention impermissible and illegal, vide K.M. Abdulla Kunhi v. Union of India, (1991) 1 SCC 476.

8. In the instant case, there is delay of eleven days in considering the representation, as referred to above, and the same, in our considered opinion, vitiates the impugned order of detention. We are, therefore, inclined to allow this petition. The order of detention dated 13.3.2007 is quashed. The detenu is directed to be set at liberty forthwith unless his presence is required in connection with any other case.

sd/-
Asst.Registrar

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Sub Asst.Registrar

ATR

To

1. The Secretary to Government,
   State of Tamil Nadu,
   Department of Prohibition & Excise,
   Fort St. George,
   Chennai 600009.

2. The District Magistrate and
   the District Collector,
   Cuddalore District, Cuddalore.

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3. The Superintendent,
   Central Prison,
   Cuddalore.

4. The Public Prosecutor,
   High Court, Madras.

5. The Joint Secretary to Government
   Public (Law & Order),
   Fort St. George, Chennai.9.

KA(CO)
RD 3.9.07

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